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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,394	08/01/2003	Michael V. Pavlov	COBR-10042	2919

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EXAMINER

GARCIA, ERNESTO

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/632,394

Applicant(s)

PAVLOV, MICHAEL V.

Examiner

Ernesto Garcia

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5, 9, 12, 16 and 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 38-40 is/are allowed.
- 6) ☒ Claim(s) 5, 12, 16 and 31-37 is/are rejected.
- 7) ☒ Claim(s) 3 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/1/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The examiner confirmed three pages of IDS, PTO-1449, were received as originally filed instead of five pages (see attachment of fax showing three pages of IDS).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 33 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The subject matter that the first edge portions 156 are not longitudinally aligned with adjacent third edge portions 158 is not found in the original disclosure. As best understood, Figure 3 shows the first edge portions 156 being longitudinally aligned with adjacent third edge portions 158, if viewed parallel to the longitudinal axis of the tape. Furthermore, applicant has not defined "longitudinally

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2/18/04

Art Unit: 3679

aligned" to render one to understand whether the first portions are coaxially aligned with the adjacent third portions in a plane, or the first portions are coaxially aligned with the third portions such that the third portions are twisted 90 degrees relative to the first portions so that the edge portions are not longitudinally aligned.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 and 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,601,830 in view of Cochrane, British patent GB-2,337,279.

Regarding claim 36, in claims 1 and 10 of U.S. patent 6,601,830, they each lack the limitation "said channel does not receive a reinforcing wire". Cochrane teaches, on

Art Unit: 3679

page 3 in lines 26-27, a barrier structure without a reinforcing wire thus the channel does not receive a reinforcing wire. Cochrane states that the invention is intended to cover the barrier structure without receiving a reinforcing wire in the channel such that the barrier structure is optional. Therefore, as taught by Cochrane, it would have been obvious to one of ordinary skill in the art at the time the invention was made to not receive a reinforcing wire in the channel as an option to the barrier structure.

Regarding claim 5, Cochrane teaches the metal tape having a plurality of first regions, second regions, and third regions and a distance between the barb points of the barbs is equal to a distance between adjacent ones of the second regions of the tape.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 16, 31, 32, 35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Boggs, 4,509,726.

Regarding claim 12, a width of each of the flanges in each second region is equal to a width of each of the flanges in each third region. The examiner has considered the second region and the third region share a common width at a junction of the second region and the third region as the regions are adjacent.

Regarding claim 16, Boggs et al., disclose the metal tape **11** having a plurality of the first regions **A17**, the second regions **A18**, and the third regions **A19**. A distance between the barb points **22** of the barbs **21** is approximately equal as a distance between adjacent ones of the second regions **A18** of the metal tape **11**.

Regarding claim 31, Boggs et al., disclose in Figure 2, a barrier structure comprising a metal tape **11** comprising an elongate body **12**, a pair of elongate flanges **19**, and barbs **21**. The body **12** defines a longitudinally extending channel **26**. The flanges **19** extend transversely from each side **A4** of the channel **26**. The barbs **21** are spaced along the metal tape **11** and connected to the metal tape **11** by respective barb roots **23**. The flanges **19** have respective edges **A7** with first edge portions **A8**, second edge portions **A9**, and third edge portions **A10**. The first edge portions **A8** are adjacent to the barbs **21**. The second edge portions **A9** are adjacent to the first edge portions **A8**, and the third edge portions **A10** are adjacent to the second edge portions **A9**. The second edge portions **A9** are not continuous with the first edge portions **A8** and the second edge portions **A9** are not continuous with the third edge portions **A10**.

Regarding claim 32, the first edge portions **A8** are longitudinally aligned with adjacent third edge portions **A11**.

Regarding claim 35, the channel **26** forms an arc extending between the flanges **19**. The arc has an angle of approximately 180 degrees.

Regarding claim 37, Boggs et al. discloses in Figure 37, a barrier structure comprising a continuous piece of elongated metal tape **11** comprising an elongated body **12**, barb roots **23**, and a pair of tapered barbs **21** secured to a barb root **23**. The body **12** defines a longitudinally extending channel **26** and an elongate flange **19** extending transversely from each side **A4** of the channel **26**. The barb roots **23** are spaced along the metal tape **11** and secured to the flanges **19**. The barbs **21** are secured to a barb root **23**. The barbs **21** extend in opposing longitudinal directions **A15**. Each of the barbs **21** forms a barb point **22**. A first region **A17** of the body **12** is adjacent to the barb root **23**. A second region **A18** of the body **12** is adjacent to the first region **A17** distal from the barb root **23**. A third region **A19** of the body **12** is adjacent to the second region **A18** distal from the first region **A17**. The third region **A19** extends lengthwise from the second region **A18** and meets a corresponding third region **A21** extending lengthwise away from another second region **A22**. A width **A23** of the flanges **19** in the first region **A17** is greater than a width **A24** of the flanges **19** in each third region **A19**. The channel **26** describes an arc extending between the flanges **19**. The arc extends less or equal to approximately 180 degrees. Note, the examiner has

taken the broadest interpretation of the term “adjacent” such that the first region **A17** is adjacent (nearby) to the barb root **23**.

Claims 31, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Fibun, British patent GB-2,039,683.

Regarding claim 31, Fibun discloses in Figures 2 and 3, a barrier structure comprising a metal tape **12a** comprising an elongate body **13**, a pair of elongate flanges **A30**, and barbs **14**. The body **13** defines a longitudinally extending channel **17**. The flanges **A30** extend transversely from each side **A40** of the channel **17**. The barbs **14** are spaced along the metal tape **12a** and connected to the metal tape **12a** by respective barb roots **A60**. The flanges **A30** have respective edges **A7** with first edge portions **A80**, second edge portions **A90**, and third edge portions **A100**. The first edge portions **A80** are adjacent to the barbs **14**. The second edge portions **A90** are adjacent to the first edge portions **A80**, and the third edge portions **A100** are adjacent to the second edge portions **A90**. The second edge portions **A90** are not continuous with the first edge portions **A80** and the second edge portions **A90** are not continuous with the third edge portions **A100**.

Regarding claim 32, the first edge portions **A80** are longitudinally aligned with adjacent third edge portions **A110**.

Regarding claim 34, the channel **17** does not receive a reinforcing wire (page 2, lines 34-37; a fibre-optic filament is not a reinforcing wire).

Regarding claim 35, the channel **17** forms an arc extending between the flanges **A30**. The arc has an angle of approximately 180 degrees.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boggs, et al., 4,509,726, in view of Cochrane, British patent, GB 2,337,279.

Regarding claim 34, Boggs, as discussed above, fails to disclose the channel **26** does not receive a reinforcing wire **18**. Cochrane teaches on page 3 in lines 26-27 a barrier structure without a reinforcing wire thus the channel does not receive a reinforcing wire. Cochrane states that the invention is intended to cover the barrier structure without receiving a reinforcing wire in the channel. Therefore, as taught by Cochrane, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to not receive a reinforcing wire in the channel to cover the barrier structure in the invention.

Allowable Subject Matter

Claims 4 and 38-40 are allowed.

Claims 3 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 9, the prior art of record does not disclose or suggest a barrier structure comprising a width of each of the flanges in each third region being greater than a width of each of the flanges in each second region;

regarding claims 3 and 38, the prior art of record does not disclose or suggest a barrier structure comprising a third region extending lengthwise from a second region and meeting a corresponding third region extending lengthwise away from another second region. British patent, GB-2,039,683 to Fibun, fails teach a corresponding third region extending lengthwise away from another second region; and,

regarding claims 4, 39 and 40, these claims depend from claim 38.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 703-308-8606. The examiner can normally be reached from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.


Anthony Knight
Supervisory Patent Examiner
Group 3600

Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3600

E.G.

February 17, 2004

Attachments: one marked-up copy of Cochrane, 2,337,279;
one marked-up copy of British patent, GB-2,039,683 to Fibun; and,
one fax of 6 pages confirming 3 pages of PTO-1449's received as
originally filed.

Art Unit: 3679

4,509,726



